

1 Rule 64A. Prejudgment writs in general.

2 (a) Availability. A writ of replevin, attachment or garnishment is available after the claim has
3 been filed and before judgment only upon written order of the court.

4 (b) Motion; affidavit. To obtain a writ of replevin, attachment or garnishment before
5 judgment, plaintiff shall file a motion, security as ordered by the court and an affidavit stating
6 facts showing the grounds for relief and other information required by these rules. If the plaintiff
7 cannot by due diligence determine the facts necessary to support the affidavit, the plaintiff shall
8 explain in the affidavit the steps taken to determine the facts and why the facts could not be
9 determined. The affidavit supporting the motion shall state facts in simple, concise and direct
10 terms that are not conclusory.

11 (c) Grounds for prejudgment writ. Grounds for a prejudgment writ include, in addition to the
12 grounds for the specific writ, all of the requirements listed in subsections (c)(1) through (c)(3)
13 and at least one of the requirements listed in subsections (c)(4) through (c)(10):

14 (c)(1) that the property is not earnings and not exempt from execution; and

15 (c)(2) that the writ is not sought to hinder, delay or defraud a creditor of the defendant; and

16 (c)(3) a substantial likelihood that the plaintiff will prevail on the merits of the underlying
17 claim; and

18 (c)(4) that the defendant is avoiding service of process; or

19 (c)(5) that the defendant has assigned, disposed of or concealed, or is about to assign, dispose
20 of or conceal, the property with intent to defraud creditors; or

21 (c)(6) that the defendant has left or is about to leave the state with intent to defraud creditors;
22 or

23 (c)(7) that the defendant has fraudulently incurred the obligation that is the subject of the
24 action; or

25 (c)(8) that the property will materially decline in value; or

26 (c)(9) that the plaintiff has an ownership or special interest in the property; or

27 (c)(10) probable cause of losing the remedy unless the court issues the writ.

28 (d) Statement. The affidavit supporting the motion shall state facts sufficient to show the
29 following information:

30 (d)(1) if known, the nature, location, account number and estimated value of the property and
31 the name, address and phone number of the person holding the property;

(d)(2) that the property has not been taken for a tax, assessment or fine;

(d)(3) that the property has not been seized under a writ against the property of the plaintiff
or that it is exempt from seizure;

(d)(4) the name and address of any person known to the plaintiff to claim an interest in the
property; and, if the motion is for a writ of garnishment,

(d)(5) the name and address of the garnishee; and

(d)(6) that the plaintiff has attached the garnishee fee established by Utah Code Section 78-7-
44.

(e) Notice, hearing. The court may order that a writ of replevin, attachment or garnishment be
issued before judgment after notice to the defendant and opportunity to be heard.

(f) Method of service. The affidavit for the prejudgment writ shall be served on the defendant
and any person named by the plaintiff as claiming an interest in the property. The affidavit shall
be served in a manner directed by the court that is reasonably calculated to expeditiously give
actual notice of the hearing.

(g) Reply. The defendant may file a reply to the affidavit for a prejudgment writ at least 24
hours before the hearing. The reply may:

(g)(1) challenge the issuance of the writ;

(g)(2) object to the sufficiency of the security or the sufficiency of the sureties;

(g)(3) request return of the property;

(g)(4) claim the property is exempt; or

(g)(5) claim a set off.

(h) Burden of proof. The burden is on the plaintiff to prove the facts necessary to support the
writ.

(i) Ex parte writ before judgment. If the plaintiff seeks a prejudgment writ prior to a hearing,
the plaintiff shall file an affidavit stating facts showing irreparable injury to the plaintiff before
the defendant can be heard or other reason notice should not be given. If a writ is issued without
notice to the defendant and opportunity to be heard, the court shall set a hearing for the earliest
reasonable time, and the writ and the order authorizing the writ shall:

(i)(1) state the grounds for issuance without notice;

(i)(2) designate the date and time of issuance and the date and time of expiration;

(i)(3) designate the date, time and place of the hearing;

63 (i)(4) forthwith be filed in the clerk's office and entered of record;

64 (i)(5) expire 10 days after issuance unless the court establishes an earlier expiration date, the
65 defendant consents that the order and writ be extended or the court extends the order and writ
66 after hearing;

67 (i)(6) be served on the defendant and any person named by the plaintiff as claiming an
68 interest in the property in a manner directed by the court that is reasonably calculated to
69 expeditiously give actual notice of the hearing.

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